

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ERIC M. ROBINSON,

Petitioner,

vs.

BRAD JOHNSON,

Respondent.

8:19CV42

MEMORANDUM AND ORDER

This matter is before the court on Petitioner Eric M. Robinson's Motion for Reconsideration (filing 30) in which Petitioner asks the court to reconsider its April 2, 2020 Memorandum and Order and Judgment (filings 27 & 28) dismissing Petitioner's § 2241 habeas petition without prejudice. Upon careful consideration and for the reasons previously stated in the court's order dismissing the petition (filing 27),

IT IS ORDERED that Petitioner's Motion for Reconsideration (filing 30) is denied.¹

¹ The court notes that Petitioner may file a new habeas case pursuant to 28 U.S.C. § 2241 even if he is not presently incarcerated. *See McCoy v. Woods*, No. 420CV00476LPRPSH, 2020 WL 7074457, at *3 (E.D. Ark. Nov. 2, 2020), *report and recommendation adopted*, No. 420CV00476LPRPSH, 2020 WL 7062901 (E.D. Ark. Dec. 2, 2020) (collecting cases and holding state prisoner out on bond pending trial was in "custody" for habeas purposes). However, Petitioner would still have to present extraordinary circumstances to warrant interference with his pending state criminal proceedings as the court explained in its order of dismissal. *See Harmon v. City of Kansas City, Mo.*, 197 F.3d 321, 325 (8th Cir. 1999) ("In *Younger v. Harris*, [401 U.S. 37, 43–44 (1971)], the Supreme Court advanced the position that federal courts should refrain from interfering with pending state judicial proceedings absent extraordinary circumstances."); *see also Hensley v. Mun. Court*, 411 U.S. 345, 353 (1973) ("Where a state defendant is released on bail or on his own recognizance pending trial or pending appeal, he must still contend with the requirements of the exhaustion doctrine if he seeks habeas corpus relief in the federal courts.").

Dated this 19th day of January, 2021.

BY THE COURT:

A handwritten signature in blue ink that reads "Richard G. Kopf". The signature is written in a cursive, flowing style.

Richard G. Kopf
Senior United States District Judge